AGREEMENT BETWEEN THE CITY OF PALO ALTO AND SAVE SAN FRANCISCO BAY ASSOCIATION (SAVE THE BAY) TO PERMIT THE USE OF REAL PROPERTY IN ORDER TO IMPLEMENT A HABITAT RESTORATION PROJECT AT THE BAYLANDS (BYXBEE PARK)

This agreement is entered into by Save San Francisco Bay Association (aka “Save The Bay”), a California nonprofit organization (“the nonprofit organization”) and the City of Palo Alto (“the owner”).

PERTINENT FACTS

A. The owner owns certain real property (“the property”), located in the City of Palo Alto, Santa Clara County, California, as shown in Exhibit A, which is incorporated by reference and attached.

B. The nonprofit organization is a California nonprofit organization existing under Section 501(c)(3) of the United States Internal Revenue Code and whose purposes are consistent with Division 21 of the California Public Resources Code.

C. The owner seeks the assistance of Save The Bay in restoring the natural resources and enhancing habitat on the property, and Save The Bay seeks to provide this assistance.

D. On December 13, 2007, the State Coastal Conservancy (“the Conservancy”), an agency of the State of California established under Division 21 of the Public Resources Code, authorized a grant to Save The Bay, subsequently awarded under Grant Agreement No. 08-____ (“the grant agreement”), to undertake on the property a habitat restoration project with school and volunteer groups.

E. The grant agreement requires that Save The Bay enter into an agreement sufficient to protect the public interest in any restoration projects implemented under the Conservancy’s grant, and to ensure that Save The Bay has permission to implement and monitor projects on the owner’s land.

THE PARTIES AGREE AS FOLLOWS, in light of the Pertinent Facts, above:

1. DURATION. This agreement shall take effect when fully executed, on the date last signed below, and shall run until the later of 7 years from its effective date or completion of the restoration described in this agreement, unless the agreement is terminated earlier by either party in writing, with written consent of the Executive Officer of the Conservancy, which shall not be unreasonably withheld.

2. RESTORATION AND MAINTENANCE. Save The Bay shall implement a restoration project on the property in accordance with the grant agreement, including, without limitation, trash collection, eradication of non-native plants, collection of seeds or cuttings, and planting of appropriate native species. Save The Bay shall maintain the project during the
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term of this agreement. The owner shall maintain the project for at least four years following the termination of this agreement, consistent with the requirements of the grant agreement. This clause shall survive termination of this agreement.

3. **COASTAL CONSERVANCY GRANT.** Save The Bay will fulfill the requirements of the grant agreement with respect to the property.

4. **SIGNS.** Save The Bay has an agreement on file with the Conservancy stating the reasons why they are exempt from installing signs at the site. The Conservancy will be acknowledged for their support of the project in other means, including website, newsletters, and annual reports produced by Save The Bay.

5. **ACCESS BY THE NONPROFIT ORGANIZATION.** Save The Bay shall have access to the property to accomplish the purposes of this agreement, including monitoring during the entire term of this agreement. The owner may restrict or deny access to the property if an emergency exists which threatens public health and safety or the natural resources of the property. In that event, all reasonable measures shall be taken to remedy the emergency conditions and restore Save The Bay’s right of access to the property.

6. **INSPECTION.** Save The Bay and the owner shall permit the Conservancy, its agents or employees, to visit the project site at reasonable intervals during the term of this agreement and for at least four years thereafter to determine whether the site is being restored and maintained in a manner consistent with the grant agreement. The Conservancy shall provide advance notice to Save The Bay and owner prior to any inspection. This clause shall survive termination of this agreement.

7. **OWNER’S USE OF THE PROPERTY.** Except as provided in this paragraph, the owner reserves the right to use the property in any manner, provided that its use does not unreasonably interfere with Save The Bay’s rights under this agreement. During the term of this agreement, the owner shall use the property and habitat improvements in a manner consistent with the purposes of the grant agreement; this includes, but is not limited to, refraining from harming, damaging, removing, altering, or interfering with the restored sites. Save The Bay shall adhere to the conditions of the special use permit issued by the owner.

8. **SUPERVISION.** Save The Bay shall exercise reasonable diligence in supervising school children, members of the public, and others who participate in restoration projects. Save The Bay shall not conduct its program in any manner that would jeopardize public safety or damage property.

9. **LIABILITY.** Save The Bay shall be responsible for, indemnify and save harmless the Conservancy, its officers, agents, and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to the property and improvements on it, except for active negligence of the Conservancy, its officers, agents or employees. The duty to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778. Save The Bay waives any and all rights to any type of express or implied indemnity or right of contribution from
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the Conservancy, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to the project, the property, and improvements on it.

10. **SUCCESSORS TO THE NONPROFIT ORGANIZATION.** If, for any reason, including, but not limited to the dissolution and winding up of the nonprofit organization, the nonprofit organization is unwilling or unable to meet its obligations under this agreement, the Executive Officer of the Conservancy shall have the right to designate a public entity or nonprofit corporation to assume the responsibilities of the nonprofit organization under this agreement, with written consent of the owner, which shall not be unreasonably withheld.

11. This agreement shall not be terminated or modified without the written consent of the Executive Officer of the State Coastal Conservancy, which is agreed to be a third-party beneficiary of this agreement.

12. **SUCCESSORS IN INTEREST.** The terms of this agreement shall be binding on all successors and assigns of the parties to this agreement.

13. **FORBEARANCE NOT A WAIVER.** Any forbearance on the part of a party or its successor in interest, to enforce the terms and provisions of this agreement in the event of a breach shall not be deemed a waiver of the party’s right regarding any subsequent violation or breach.

14. **SEVERABILITY.** If any of the provisions of this agreement are found by a court of law to be of no force or effect, the validity of all other provisions shall be unaffected.

15. **NOTICES:** Notices issued pursuant to this agreement shall be sent to the following addresses (or to a subsequent address of which notice has been provided in writing):

   Executive Officer  
   State Coastal Conservancy  
   1330 Broadway, 13th Floor  
   Oakland, CA 94612-2530

   City of Palo Alto  
   City Manager  
   Frank Benest  
   250 Hamilton Ave.  
   Palo Alto, CA 94301
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SAVE THE BAY

[Authorized signature]  Date

David Lewis

Executive Director

CITY OF PALO ALTO

[Authorized signature]  Date

[Print or type name]

[Title]